

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Tony Hammond, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Statutory Review of the System
for Regulating Rates and Classes
for Market Dominant Products

Docket No. RM2017-3

ORDER GRANTING MOTION FOR EARLY TERMINATION OF THE NON-PUBLIC
STATUS OF APPENDICES A AND G AND PROVIDING LIMITED EXTENSION OF
COMMENT DEADLINE

(Issued April 13, 2018)

I. INTRODUCTION

In accordance with 39 U.S.C. § 504(g)(3) and 39 C.F.R. §§ 3007.31(d) and 3007.33(a), the Commission has determined the appropriate degree of confidentiality to accord to Appendices A and G, which were filed by the Postal Service under seal. For the reasons discussed below, the Commission terminates the non-public status of Appendices A and G.

II. PROCEDURAL HISTORY

In order to provide necessary context, this summary of the procedural history discusses the initiation of this proceeding and the initial comments received from the public, the findings and notice of proposed rulemaking issued by the Commission, and the relevant comments and motions practice.

A. Initiation of this Proceeding and Initial Comments from the Public

Ten years after the enactment of the Postal Accountability and Enhancement Act (PAEA),¹ the Commission was required to initiate a review of the system for regulating rates and classes for market dominant products to determine if the ratemaking system has achieved the objectives of 39 U.S.C. § 3622(b), taking into account the factors enumerated in 39 U.S.C. § 3622(c). 39 U.S.C. § 3622(d)(3). On December 20, 2016, the Commission initiated its review by issuing an advance notice of proposed rulemaking (ANPR).² The ANPR established a framework for the review, appointed an officer of the Commission to represent the interests of the general public (Public Representative), and provided an opportunity for public comment by March 20, 2017. Order No. 3673 at 4-12.

In response to the ANPR, the Commission received 82 sets of comments—including public comments filed by the Alliance of Nonprofit Mailers, Association for Postal Commerce, and MPA—The Association of Magazine Media (together, Joint Movants)³ and the Postal Service.⁴ The Postal Service also filed two documents under seal and applied for non-public treatment of those materials.⁵ Sealed Appendix C (A&M

¹ Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006).

² Advance Notice of Proposed Rulemaking on the Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products, December 20, 2016 (Order No. 3673).

³ Comments of Alliance of Nonprofit Mailers, Association for Postal Commerce, and MPA—the Association of Magazine Media, March 20, 2017.

⁴ Comments of the United States Postal Service, March 20, 2017 (2017 Postal Service Comments).

⁵ 2017 Postal Service Comments, file “App C G nonpublic treatment app.pdf” (Application).

Cost Report) reports the scope and magnitude of the cost-saving opportunities identified by an independent consultant to the Postal Service.⁶ Sealed Appendix G “contains two charts projecting the Postal Service’s losses and liquidity over ten years, assuming the continuation of the current [ratemaking] system.” 2017 Postal Service Comments at 3. On March 30, 2017, the Joint Movants filed a motion for access to the non-public (unredacted) versions of the A&M Cost Report and Appendix G on behalf of three individuals.⁷ Given that no objection to this request was filed, on April 5, 2017, the Commission granted this motion.⁸

B. Commission Findings and Notice of Proposed Rulemaking

On December 1, 2017, the Commission issued Order No. 4257,⁹ which announced the Commission’s findings concerning the review of the existing ratemaking system. Order No. 4257 specifically determined that the ratemaking system has not achieved the objectives, taking into account the factors. Order No. 4257 at 275. On December 1, 2017, the Commission also issued a notice of proposed rulemaking (NPR) for the purpose of modifying existing regulations or adopting an alternative system as necessary to meet the objectives of 39 U.S.C. § 3622(b).¹⁰ The NPR provided an opportunity for public comment by March 1, 2018, and reply comment by March 30,

⁶ 2017 Postal Service Comments at 2. No participant has challenged the non-public treatment of the A&M Cost Report.

⁷ Motion of Alliance of Nonprofit Mailers, Association for Postal Commerce, and MPA—The Association of Magazine Media for Access to Nonpublic Documents, March 30, 2017, at 1. The Joint Movants attached a Statement of Compliance with Protective Conditions along with certifications signed by each of the three individuals, acknowledging their agreement to comply with the protective conditions. *Id.* at 3.

⁸ Order Granting Motion for Access to Non-Public Material Under Seal, April 5, 2017 (Order No. 3848). In accordance with the Commission’s rules, the individuals granted access may only use the unredacted versions of the A&M Cost Report and Appendix G subject to the agreed upon protective conditions, which limit, among other things, the time and purpose for which the materials may be used. See 39 C.F.R. §§ 3007.40(d)(1) and 3007.60.

⁹ Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, December 1, 2017 (Order No. 4257).

¹⁰ Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258).

2018. Order No. 4258 at 130, 131. Among other changes to the existing ratemaking system, which generally does not allow annual rate increases for each class of market dominant products to exceed the change in the consumer price index for all urban consumers (CPI-U), the NPR proposes to provide the Postal Service with supplemental rate authority of an additional 2 percentage points per calendar year for the first five full calendar years following the effective date of the proposed rules. *Id.* at 26.

C. Relevant Comments and Motions Practice

In response to the NPR, the Commission received approximately 194 sets of comments—including public comments filed by the Joint Movants¹¹ and the Postal Service.¹² The Postal Service also filed one document—Appendix A—under seal, stating that Appendix A was an update to Appendix G and that the Postal Service was incorporating by reference its Application filed on March 20, 2017.¹³ On March 5 and 6, 2018, the Commission granted two unopposed motions filed by the Joint Movants to provide seven individuals with access to the non-public (unredacted) version of Appendix A, subject to protective conditions.¹⁴

On March 8, 2018, stating that “[t]he source data, calculations, and most of the assumptions underlying the values in the charts [in Appendix A] are undisclosed,” the Joint Movants requested that the Commission or the Presiding Officer issue an information request to the Postal Service requesting the production of workpapers containing enough information to enable the full verification of the data, assumptions,

¹¹ Comments of Alliance of Nonprofit Mailers, Association for Postal Commerce, and MPA—the Association of Magazine Media, March 20, 2017.

¹² Initial Comments of the United States Postal Service in Response to Order No. 4258, March 1, 2018 (2018 Postal Service Comments).

¹³ 2018 Postal Service Comments at 7-8, *see* Notice of the United States Postal Service of Filing Non-Public Materials, March 1, 2018, at 1.

¹⁴ Order Granting Unopposed Motion for Access, March 5, 2018 (Order No. 4425); Order Granting Unopposed Motion for Access, March 6, 2018 (Order No. 4426).

and calculations underlying the values displayed in Appendix A.¹⁵ On March 15, 2018, the Postal Service indicated that it did not object to voluntarily producing “documents that identify the data and the quantitative assumptions underlying the net-loss figures reflected in Appendix A.”¹⁶ Accordingly on March 16, 2018, the Postal Service filed two documents (a pdf file and an Excel spreadsheet) containing the assumptions and showing the derivation of the charts from financial data.¹⁷ The Postal Service redacted some of the information contained in these two documents from the version of the filing made available to the public, filed the non-public (unredacted) versions under seal, and applied for non-public treatment.¹⁸ On March 16, 2018, the Joint Movants requested that the Commission terminate the non-public status of Appendices A and G.¹⁹ On March 23, 2018, the Postal Service opposed the Motion.²⁰

As provided for under the NPR’s procedural schedule, 18 sets of reply comments were filed—including public reply comments filed by the Joint Movants²¹ and the Postal

¹⁵ Motion of Alliance of Nonprofit Mailers, Association for Postal Commerce, and MPA—the Association of Magazine Media for Issuance of Information Request, March 8, 2018.

¹⁶ Response of the United States Postal Service to Motion of Alliance of Nonprofit Mailers, Association for Postal Commerce, and MPA—the Association of Magazine Media for Issuance of Information Request, March 15, 2018.

¹⁷ Notice of the United States Postal Service of Filing Non-Public Materials, March 16, 2018 (Appendix A Workpapers Notice).

¹⁸ Appendix A Workpapers Notice, file “Baseline forecast assumptions public.pdf;” Appendix A Workpapers Notice, Excel file “Liquidity Scenarios FY17-FY23 pub.xlsx;” and Appendix A Workpapers Notice, Attachment to Notice of Non-Public Filing (collectively, “Appendix A Workpapers”). No participant has challenged the non-public treatment of the Appendix A Workpapers.

¹⁹ Motion of the Association for Postal Commerce, Alliance of Nonprofit Mailers, and MPA—the Association of Magazine Media for Early Termination of Non-Public Status of Two Documents Filed Under Seal, March 16, 2018 (Motion).

²⁰ Response of the United States Postal Service to Motion of the Association for Postal Commerce, Alliance of Nonprofit Mailers, and MPA—Association of Magazine Media for Early Termination of Non-Public Status of Two Documents Filed Under Seal, March 23, 2018 (Response).

²¹ Three additional participants joined this set of reply comments. Reply Comments of Alliance of Nonprofit Mailers, American Catalog Mailers Association, Inc., Association for Postal Commerce, Data & Marketing Association, Idealliance, and MPA—the Association of Magazine Media, March 30, 2018 (2018 ANM *et al.* Reply Comments).

Service.²² The Joint Movants also filed two documents under seal containing their analysis of Appendix A, noting that their sealed documents discuss the information that the Postal Service claimed to be non-public.²³

III. THE NON-PUBLIC MATERIALS

The following discussion describes the non-public materials at issue based on the information that is publicly available in this proceeding.

A. Appendix G

Appendix G consists of two charts that project the Postal Service's net losses and liquidity from 2016 through 2026 based on the assumption that market dominant rate increases would not exceed the CPI-U. See 2017 Postal Service Comments at 3. The public version of Chart 1 to Appendix G displays the title "Projected net losses with a CPI-only price cap and two volume scenarios," a vertical axis with the top value of \$0.0, a horizontal axis of years (2016 through 2026), and a legend indicating lines for a "baseline volume scenario" and an "optimistic volume scenario."²⁴ The public version of Chart 2 to Appendix G displays the title "Projected liquidity with a CPI-only price cap, no defaults on retirement-related obligations, and two volume scenarios," a horizontal axis of years (2016 through 2026), and a legend indicating lines for a "baseline volume

²² Reply Comments of the United States Postal Service in Response to Order No. 4258, March 30, 2018 (2018 Postal Service Reply Comments).

²³ Three additional participants joined the Joint Movants' proffer. 2018 *ANM et al.* Reply Comments, Appendix B; see Application of Alliance of Nonprofit Mailers, Association for Postal Commerce, and MPA—the Association of Magazine Media for Nonpublic Treatment of Two Documents, March 30, 2018; Motion of Alliance of Nonprofit Mailers, Association for Postal Commerce, and MPA—the Association of Magazine Media for Leave to File Nonpublic Library Reference ANM *et al.*-LR-RM2017-3/NP6 and Associated Notice of Filing Out of Time, April 2, 2018; Notice of Filing of Nonpublic Library Reference ANM *et al.*-LR-RM2017-3/NP6 on Behalf of Alliance of Nonprofit Mailers, American Catalog Mailers Association, Inc., Association for Postal Commerce, Data & Marketing Association, Idealliance, and MPA—the Association of Magazine Media, April 2, 2018.

²⁴ 2017 Postal Service Comments, file "App G 10-year forecasts public.pdf."

scenario” and an “optimistic volume scenario.” *Id.* A black box redacts the remaining contents of both charts from public view. *Id.*

The Postal Service explains that both charts display two alternative volume scenarios: (1) “a reasonable baseline scenario” that assumes that “a recession with half the impact on the Postal Service of the Great Recession” will occur and (2) “an optimistic scenario based on the same initial volumes and revenues, but with no recession in the next decade.” 2017 Postal Service Comments at 141 (underlining in original).

B. Appendix A

Appendix A consists of two charts that project the Postal Service’s net losses and liquidity from 2018 through 2023 based on two alternative assumptions: (1) that market dominant rate increases would not exceed the CPI-U and (2) that market dominant rate increases would not exceed the CPI-U plus 2 percentage points of supplemental rate authority. 2018 Postal Service Comments at 7.

The public version of Chart 1 to Appendix A displays the title “Projected net losses with a CPI-only price cap, a CPI+2 price cap, and two volume scenarios,” a vertical axis “in Billions,” and a horizontal axis of years (2018 through 2023).²⁵ The public version of Chart 2 to Appendix A displays the title “Projected liquidity with a CPI-only price cap, a CPI+2 price cap, no defaults on retirement-related obligations, and two volume scenarios,” a vertical axis “in Billions,” and a horizontal axis of years (2018 through 2023). *Id.* A black box redacts the remaining contents of both charts from public view. *Id.*

Similar to Appendix G, Appendix A’s charts display two alternative volume scenarios: a “baseline” scenario assuming that a recession will occur in the next five years and an “optimistic” scenario that does not include an assumption of a recession. 2018 Postal Service Comments at 54-55.

²⁵ 2018 Postal Service Comments, file “App A 10-year forecasts public.pdf.”

IV. SUMMARY OF ARGUMENTS

The following discussion summarizes the arguments contained in the Application filed by the Postal Service seeking non-public treatment, the Motion requesting to terminate the non-public treatment of Appendices A and G, and the Response filed by the Postal Service opposing termination of non-public treatment.

A. Application

Asking that the Commission accord non-public treatment to the A&M Cost Report and Appendix G,²⁶ the Postal Service states “[i]nformation of a commercial nature, which under good business practice would not be publicly disclosed, is not required to be disclosed to the public.” Application at 1 (citing 39 U.S.C. § 401(c)(2) and 5 U.S.C. § 552(b)(3)). The Postal Service states that the Commission construes likely commercial injury broadly, to encompass other types of injury such as harms to deliberative process.²⁷ The Postal Service asserts that Appendix G’s forecasts “reflect internal judgments and assumptions about various sensitive aspects of the Postal Service’s business.” Application at 3. Stating that it “does not routinely publicize year-by-year forecasts of its financial condition,” the Postal Service asserts that “[s]uch information would not be disclosed publicly as a matter of good business practice in the private sector.” *Id.* The Application identifies three harms alleged to result from disclosure (deliberative process, negotiation with labor organizations and/or suppliers, and competitive interests) and at least one corresponding hypothetical example of each alleged harm. *Id.* at 3-5.

²⁶ No separate application for non-public treatment was filed for Appendix A; instead, to support its assertion that Appendix A should be accorded non-public treatment, the Postal Service incorporates by reference the Application filed on March 20, 2017. 2018 Postal Service Comments at 7-8.

²⁷ Application at 1-2 n.1 (citing Docket No. RM2008-1, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, March 20, 2009, at 11 (Order No. 194)).

B. Motion

Asserting that the Application failed to provide a reasonable basis to accord non-public treatment to Appendices A and G, the Joint Movants request that the Commission unseal the full contents of Appendices A and G. Motion at 2. This request for early termination of non-public status is made in accordance with the procedures appearing in 39 C.F.R. § 3007.31. See *id.* at 1.

The Joint Movants assert that the Application invokes the wrong legal standard. *Id.* at 3. Acknowledging that “[n]ondisclosure as a matter of ‘good business practice in the private sector’” is a factor informing the analysis (*id.* (citing 39 U.S.C. § 504(g)(1) and 5 U.S.C. § 552(b))), the Joint Movants state that “[t]he standard under which the Commission ultimately decides whether to allow continued non-public treatment of a document initially filed under seal is more demanding.” Motion at 3. The Joint Movants set forth that the correct legal standard requires the Commission to balance “the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.” Motion at 3 (quoting 39 U.S.C. § 504(g)(3)(A)).

The Joint Movants contend that the Application contains only a conclusory assertion of harm that lacks factual support. Motion at 2-3. The Joint Movants state that the Commission’s rules require a more detailed threshold showing of likely harm than the Postal Service has made. *Id.* at 3 (citing 39 C.F.R. § 3007.21(c)(4) and (5)). The Joint Movants state that the Application does not identify any commercial harm that would result from disclosure of Appendices A and G and observe that each hypothetical example discussed in the Application concerns the A&M Cost Report. Motion at 3-4. Acknowledging that the request to seal the A&M Cost Report “was not unreasonable on its face,” the Joint Movants contend that disclosing Appendices A and G “would raise none of these competitive concerns.” *Id.* at 4.

The Joint Movants submit that the values depicted in Appendices A and G “are highly aggregated” and “reveal only system-wide losses and liquidity projections, with each value aggregated into a single system-wide number, and nothing more.” *Id.* The

Joint Movants state that these values do not reveal the underlying data, Postal Service business strategies, or disaggregate market dominant and competitive products. *Id.* The Joint Movants contend that viewing the charts would not allow “the public to infer from these aggregate figures any of the individual cost-saving and revenue-enhancement opportunities that the Postal Service might have considered in generating the charts, let alone the monetary value that the Postal Service or its consultants might have assigned to any of those unidentified opportunities.” *Id.* at 4-5. The Joint Movants assert that this level of aggregation removes the threat of competitive harm and, therefore, that the Application does not satisfy the “burden of persuasion” sufficient to justify non-public treatment of Appendices A and G. *Id.* at 5 (citing 39 C.F.R. § 3007.21(b)).

The Joint Movants characterize the public interest in disclosure of Appendices A and G as “strong.” Motion at 5. The Joint Movants observe that the NPR proposes to allow the Postal Service to impose larger rate increases on market dominant products than allowed under the existing ratemaking system and that the Postal Service seeks additional rate adjustment authority (more than the NPR’s proposal). *Id.* The Joint Movants characterize Appendices A and G as providing a substantial part of the Postal Service’s support for its position that the NPR’s proposal is “inadequate.” *Id.* The Joint Movants assert that the mailing public—and consumers, generally—should be allowed to view the basis for the Postal Service’s position in this proceeding. *Id.* at 6. Further, the Joint Movants state that non-public treatment of Appendices A and G would shield a central issue in this proceeding from public scrutiny and would result in the sealing of any Commission analysis of Appendices A and G. See *id.*

C. Response

The Postal Service opposes the Motion, stating, “when balanced, the nature and extent of the likely commercial injury to the Postal Service outweighs the minimal impact that these appendices will have on the public interest in maintaining financial

transparency.” Response at 1. The Postal Service restates many of the assertions regarding potential injury made in the Application. *See generally id.*

The Postal Service restates that Appendices A and G “contain information of a commercial nature, which under good business practice would not be publicly disclosed and is not required to be disclosed to the public.” *Id.* at 2 (citing Application at 1). The Postal Service restates that Appendices A and G “reflect internal judgments and assumptions about various sensitive aspects of the Postal Service’s business.” Response at 2 (quoting Application at 3). The Postal Service restates that it “does not routinely publicize multi-year forecasts of its financial condition.” Response at 2 (quoting Application at 3). The Postal Service asserts that these arguments are consistent with 39 U.S.C. § 410(c) and 39 C.F.R. § 3007.21(c). Response at 2.

With respect to the Application’s identification of potential harm resulting from disclosure, the Postal Service acknowledges that the hypothetical examples discussed in the Application are specific to the A&M Cost Report, but contends that the identified harm applies equally to Appendices A and G. *Id.* at 2 n.6. The Postal Service warns that if Appendices A and G are disclosed, “competitors could use (or misuse) the forecasts” to suggest to customers that the Postal Service is not a viable long-term service provider and thereby adversely affect the Postal Service’s ability to compete for future business. *Id.* at 2. The Postal Service also cautions that “regardless of the level of aggregation” of the values, “the charts could easily be taken out of context in a manner that could likely cause competitive harm.” *Id.*

The Postal Service asserts that the Motion invokes only a general public interest in transparency that is insufficient to overcome the presumption that non-public treatment is appropriate.²⁸ The Postal Service counters the Joint Movants’ characterization of the role of Appendices A and G in this proceeding as substantial. Response at 3-4. The Postal Service observes that Order No. 4257 and the NPR do not reference Appendix G. *Id.* at 4. The Postal Service indicates that Appendix A is not

²⁸ *Id.* at 3 (citing Docket No. N2012-1, Presiding Officer’s Ruling Concerning David B. Popkin Motion Number 1, March 6, 2012, at 6 (Docket No. N2012-1, POR No. 19)).

an independent basis for its opposition to the NPR's proposal to provide the Postal Service with 2 percentage points of supplemental rate authority and is merely illustrative of the Postal Service's opposition. *Id.* at 3. Moreover, the Postal Service states that its counterproposals to the NPR are not directly rooted on Appendix A. *Id.* at 3-4.

Additionally, the Postal Service asserts that the Motion failed to show why Appendices A and G should be disclosed to the entire public. *Id.* at 4. The Postal Service contends that the Motion is procedurally defective because it does not contain a "specific and detailed statement justifying why the non-public materials should be made public." *Id.* at 3 (quoting 39 C.F.R. § 3007.31(a)). The Postal Service notes that the Commission's rules provide a procedure for interested persons to seek access to non-public materials (subject to protective conditions); that few individuals sought access; and that all individuals who have sought access (to date) have received access.²⁹ The Postal Service further contends that the low volume of requests for access to Appendices A and G illustrates the limited public interest in those materials and belies the Joint Movants' assertion that the forecasts are a "central issue" in this proceeding. Response at 4 (quoting Motion at 6). The Postal Service states that the Joint Movants effectively present an interpretation that the Postal Service must disclose commercially sensitive information used in its filings so long as the information is material to the proceeding. Response at 5. The Postal Service argues that this interpretation is "boundless" and would unreasonably chill the Postal Service's willingness to file useful information. *Id.*

V. COMMISSION ANALYSIS

A. Introduction

The question before the Commission is whether the Postal Service has fulfilled its burden of persuasion that the charts in Appendices A and G should be withheld from

²⁹ Response at 4-5. The Postal Service observes that the Commission's rules provide the Public Representative with access to non-public materials. *Id.* at 5.

public disclosure. 39 C.F.R. § 3007.21(b). For the reasons discussed below, the Commission concludes that the Postal Service has not met its burden and that the public interest in maintaining the financial transparency of the Postal Service—a government establishment operating in commercial markets—outweighs the nature and extent of any likely commercial (and deliberative process) harm that may result from disclosing the charts projecting aggregate net losses and liquidity under various alternative scenarios.

B. Legal Standard

The PAEA sets forth both a mechanism for the Postal Service to seek non-public treatment of materials that it provides to the Commission and the legal standard for the Commission to evaluate the degree of appropriate confidentiality to be accorded to such materials. As a threshold matter, for the Postal Service to seek non-public treatment of materials that it provides to the Commission, the information contained in those materials must be of the type and nature eligible for non-public treatment. Section 504(g)(1) of title 39 of the United States Code enumerates certain types of information for which the Postal Service may seek non-public treatment. This provision includes specific cross-references recognizing that the Postal Service may seek non-public treatment of “information which is described in section 410(c) [of title 39], or exempt from public disclosure under section 552(b) of title 5 [the Freedom of Information Act (FOIA)].” 39 U.S.C. § 504(g)(1). In this proceeding, two types of information are at

issue.³⁰ First, section 410(c)(2) of title 39 provides that the Postal Service shall not be required to disclose “information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.”³¹ Second, the FOIA exempts from public disclosure:

inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

5 U.S.C. § 552(b)(5).

After the Postal Service has identified its basis for seeking non-public treatment of the materials that it provides to the Commission, the PAEA also establishes the Commission’s specific authority as it relates to the information that the Postal Service claims to be non-public. Section 504(g)(3)(A) of title 39 states that the Commission is not prohibited from publicly disclosing such information as long as two conditions are met. First, the Commission must have engaged in a rulemaking to “establish a procedure for according appropriate confidentiality to information identified by the Postal Service [as non-public].”³² Second, in determining the appropriate degree of confidentiality to be given to information alleged to be non-public by the Postal Service, § 504(g)(3)(A) of title 39 of the United States Code directs the Commission to “balance the nature and extent of the likely commercial injury to the Postal Service against the

³⁰ Pursuant to 39 C.F.R. § 3007.21(a), the Postal Service must identify the specific materials and circumstances causing the non-public materials to be submitted to the Commission in its application for non-public treatment, which must be submitted whenever it files non-public materials, as described in more detail below.

³¹ 39 U.S.C. § 410(c)(2). Similarly, the FOIA exempts from public disclosure information that is specifically exempted by another statutory provision, such as 39 U.S.C. § 410(c)(2). 5 U.S.C. § 552(b)(3).

³² 39 U.S.C. § 504(g)(3)(A). In 2009, the Commission satisfied this condition when it established procedures for treatment of materials filed by the Postal Service and claimed to be non-public. Docket No. RM2008-1, Final Rule Establishing Appropriate Confidentiality Procedures, June 19, 2009 (Order No. 225); see 39 C.F.R. part 3007.

public interest in maintaining the financial transparency of a government establishment competing in commercial markets.” 39 U.S.C. § 504(g)(3)(A).

Section 3007.21(a) of title 39 of the Code of Federal Regulations states that “[w]henver the Postal Service files non-public materials with the Commission, it must submit an application for non-public treatment that clearly identifies all non-public materials and describes the circumstances causing them to be submitted to the Commission.”³³ The application therefore, in addition to demonstrating that the materials at issue in the Postal Service’s request for non-public treatment are of a type and nature eligible for non-public treatment, must also contain all of the information and arguments to “fulfill the burden of persuasion that the non-public materials should be withheld from the public.” 39 C.F.R. § 3007.21(b). That application must include a “specific and detailed statement” containing “[p]articular identification of the nature and extent of commercial harm alleged and the likelihood of such harm.” *Id.* § 3007.21(c)(4). Also, the application must “includ[e] the specific statutory basis for the [Postal Service’s] claim [that the materials are non-public], and a statement justifying application of the provision(s).” *Id.* § 3007.21(c)(1).

Once the Postal Service meets the requirements of 39 C.F.R. § 3007.21, the Commission preliminarily treats those materials as non-public materials.³⁴ The Commission’s longstanding practice is that it does not “accept” any rationale for non-public treatment given in the application for non-public treatment unless the

³³ 39 C.F.R. § 3007.21(a). Neither this rule’s adoption nor its application in this proceeding has been challenged. In the rulemaking proceeding to promulgate 39 C.F.R. part 3007, the Postal Service did not challenge 39 C.F.R. § 3007.21(a), which permits application to instances in which the Postal Service provides materials in the absence of a subpoena or a direct Commission request. See *generally* Docket No. RM2008-1, Initial Comments of the United States Postal Service, September 25, 2008; Docket No. RM2008-1, Reply Comments of the United States Postal Service, October 10, 2008; Docket No. RM2008-1, Comments of the United States Postal Service in Response to Second Notice of Proposed Rulemaking, April 27, 2009; Docket No. RM2008-1, Reply Comments of the United States Postal Service in Response to Second Notice of Proposed Rulemaking, May 11, 2009. The adoption of 39 C.F.R. § 3007.21(a) is consistent with the Commission’s general authority to promulgate rules and regulations, establish procedures, and take any other action that the Commission “deem[s] necessary and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed under [title 39 of the United States Code].” 39 U.S.C. § 503.

³⁴ See 39 C.F.R. § 3007.23; Order No. 194 at 17.

Commission makes a determination of non-public status (for Postal Service submissions) under 39 C.F.R. § 3007.32, or in response to a motion for early termination of non-public status (for any submissions) under § 3007.31.³⁵

In this Order, the Commission undertakes the final procedural step—issuance of “an order determining the appropriate degree of protection, if any, to be accorded to the materials claimed to be non-public by the Postal Service.” See 39 C.F.R. § 3007.31(d).

Section 3007.33(a) incorporates the standard for issuing a determination to terminate the non-public status of material filed under seal by the Postal Service from 39 U.S.C. § 504(g)(3)(A):

In determining whether to publicly disclose non-public materials filed by the Postal Service, the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.

39 C.F.R. § 3007.33(a).

In fulfilling the second condition of 39 U.S.C. § 504(g)(3)(A), the Commission undertakes a highly fact-specific analysis of the public interest in maintaining the financial transparency of a government entity competing in commercial markets, with a particular focus on the charts in Appendices A and G, and weighs it against the nature and extent of any likely commercial injury to the Postal Service from disclosure of those charts. This requires the Commission to evaluate the likelihood of the potential commercial harm identified by the Postal Service in its Application.

Moreover, consistent with the Commission’s specific authority to determine the appropriate degree of confidentiality to materials identified by the Postal Service as non-public under 39 U.S.C. § 504(g)(3)(A) and the Commission’s general authority to promulgate rules that are necessary to carry out the Commission’s functions and duties to the Federal Government and the general public under § 503, the Commission has recognized that there may be instances in which the likely injury to the deliberative

³⁵ Docket No. RM2009-6, Order Establishing Procedures for the Freedom of Information Act, October 23, 2009, at 9 (Order No. 322).

process is relevant. Specifically, the Commission acknowledged that it “does not read ‘likely commercial injury’ in such a narrow fashion as to exclude harm associated with [the deliberative process].” Order No. 194 at 11. Accordingly, the Commission also balances the nature and extent of the likely deliberative process injury identified by the Postal Service against the public interest in maintaining transparency. In the sections that follow, the Commission first discusses the nature and extent of any likely commercial and deliberative process-related harm, followed by a discussion of the public interest in maintaining financial transparency.

C. Nature and Extent of Alleged Injury to the Postal Service Likely to Occur From Disclosure

1. The Postal Service has not met its burden of persuasion to show that the alleged commercial injury is likely to result if Appendices A and G are disclosed to the public.

Citing to 39 U.S.C. § 401(c)(2) and 5 U.S.C. § 552(b)(3), the Application claims that likely commercial injury justifies non-public treatment. Application at 1. The Application identifies two examples of commercial harm (related to negotiation leverage and competitive harm) and provides three hypothetical examples. *Id.* at 2-5. Both examples of commercial harm and each hypothetical example are specific to the A&M Cost Report, which is not at issue here. The Response echoes that the Application identified a number of potential harms and makes specific reference to competitive harm. Response at 2. Moreover, the Postal Service follows this restatement with a footnote stating that even though the Application’s discussion of the “hypothetical scenarios with respect to this identified harm” are specific to the A&M Cost Report, “the identified harm is equally applicable to the appendices at issue here.” *Id.* at 2 n.6. Accordingly, it is unclear whether the Postal Service intends to assert both types of harm would be likely to occur as a result of disclosing Appendices A and G. Consequently, an examination of each identified harm and hypothetical example follows.

First, the Application asserts that disclosure of the non-public materials would provide labor organizations and/or suppliers extraordinary negotiating power to extract concessions from the Postal Service. Application at 4. The basis for this potential harm is that the A&M Cost Report reveals the value of particular cost-saving opportunities to the Postal Service. *Id.* The corresponding hypothetical example asserts that a labor organization whose members are affected by such cost-saving opportunities may use this information to make assumptions about the organization's negotiating leverage with the Postal Service. *Id.* at 4-5.

It is not evident how this particular harm would apply to Appendices A and G, and neither the Application nor the Response offers any explanation. Given the level of aggregation of the charts in Appendices A and G, it is unclear how a member of the public would be able to glean any valuable insight into any particular cost-saving opportunity. The charts in Appendices A and G do not identify any specific cost-saving opportunities incorporated into the final outputs. Nor do the charts in Appendices A and G disaggregate the monetary values assigned to any cost-saving opportunities incorporated into the final outputs.³⁶ Therefore, the Postal Service has not shown that disclosure of Appendices A and G would provide labor organizations and/or suppliers extraordinary negotiating power to extract concessions from the Postal Service.

Second, the Application asserts that disclosure of the non-public materials would cause competitive harm and provides two hypothetical examples. Application at 5. This potential harm and both corresponding hypothetical examples are predicated on the disclosure of the A&M Cost Report, which reveals the value of particular cost-saving opportunities to the Postal Service. *Id.* In the first hypothetical example, the competitor uses the A&M Cost Report to identify an area in which the Postal Service is less

³⁶ The Commission notes that the allegedly commercially sensitive inputs supporting Appendix A (projected competitive product price increases, projected volume declines, projected personnel compensation assumptions, projected transportation expenses, projected supplies and services expenses, and projected non-personnel expenses) may relate more closely to this commercial harm. However, those inputs are contained in separate redacted documents (Appendix A Workpapers), for which no challenge concerning non-public treatment has been filed.

efficient than the competitor. Then, the competitor targets potential customers of the corresponding competitive product. *Id.* In the second hypothetical example, the competitor uses the A&M Cost Report to identify an area in which the Postal Service may become more efficient, and then the competitor focuses its internal efficiency initiatives to preempt the Postal Service's opportunity. *Id.*

Similar to the first identified harm and corresponding hypothetical example, it is not evident how this particular harm would apply to Appendices A and G. Given the level of aggregation of the charts in Appendices A and G, it is unclear how a competitor (or any other person) would be able to identify a particular area in which the Postal Service is less efficient than a competing provider. The charts in Appendices A and G do not identify any specific efficiency-based opportunities incorporated into the final outputs. Nor do the charts in Appendices A and G disaggregate the monetary values assigned to any efficiency-based opportunities incorporated into the final outputs.

The additional assertions appearing in the Response indicate that the Postal Service is concerned that competitive harm may occur because the charts in Appendices A and G could be "misuse[d]" or "taken out of context" by competitors to drive customers away from using the Postal Service. Response at 2. This rationale is not persuasive. First, all information could be misused or taken out of context. Such potential is insufficient to justify withholding information from the public. Moreover, suggesting that information should be withheld from the public simply because it *could* be misused or taken out of context by a competitor would invite a boundless interpretation of *likely* commercial injury and therefore would be detrimental to the public interest in maintaining financial transparency. Second, given the Postal Service's public remarks concerning these charts, it is unclear how disclosure of the charts appearing in Appendices A and G would cause harm.

With respect to Appendix G, the Postal Service states:

In both scenarios, continuation of a CPI-only price cap will starve the Postal Service of cash by next year and doom it to another decade of escalating losses.

Thus, no matter how realistic or rosy the scenario, the current system has nothing to offer but another decade of non-compensatory rates, financial instability, and a lack of cash to invest in service, security, and efficiency upgrades. The only way to continue delivering the mail for even a short time would be to default on a number of statutorily-mandated post-retirement benefits payment obligations: an outcome inconsistent with the notion of self-sufficiency and the statutory objectives of financial stability and just and reasonable rates. As such, it would continue to fail to achieve Objectives 1, 3, 5, 7, 8, and 9.

2017 Postal Service Comments at 141-42. The Postal Service's public remarks indicate that the Postal Service takes the position that the forecast in Appendix G will occur even if the Postal Service continues aggressive cost-containment strategies and if the Postal Service prices competitive products above inflation. *Id.* at 141 n.271. Moreover, the publicly available version of Chart 1 in Appendix G shows that the Postal Service forecasts that it will incur net losses through at least 2026 under the existing CPI-U price cap, even under the "optimistic" volume scenario. See Appendix G, Chart 1.

Similarly, with respect to Appendix A, the Postal Service states:

Under either scenario, the Commission's proposal will starve the Postal Service of cash on hand and will leave the Postal Service with larger net losses in each of the next five years than it projects to have this year. In this sense, far from being "on the path" to financial stability, the Postal Service will be even further from that destination than it is now, so the proposed system is just as rigged for failure as the current system.

2018 Postal Service Comments at 55. The Postal Service asserts that the Appendix A "show[s] that, even under an optimistic mail-volume forecast, the Commission's supplemental rate authority proposal will result in growing annual net losses and will wipe out cash on hand." *Id.* at 70 n.175. Thus, the Postal Service offers no indication of how the charts in Appendices A and G would be any more valuable to a competitor trying to lure away the Postal Service's customers than the Postal Service's own public remarks about its financial projections.

The Joint Movants do not dispute that 39 U.S.C. § 410(c)(2) encompasses the type of information contained the charts in Appendices A and G. Instead, the Joint Movants observe that this is not the end of the inquiry pending before the Commission. See Motion at 3. Although under 39 U.S.C. § 504(g)(1) the Postal Service may seek non-public treatment for materials that contain information described in 39 U.S.C. § 410(c)(2), the PAEA and the Commission's rules impose additional analysis to determine the degree of confidentiality, if any, to be accorded to such materials. The Application must fulfill the burden of persuasion to show the nature and extent of the alleged commercial harm and the likelihood of such harm. 39 C.F.R. § 3007.21(b) and (c). Further, the Commission must "balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets." 39 U.S.C. § 504(g)(3)(A)); see 39 C.F.R. § 3007.33(a). Although there is no dispute that the Postal Service has not, as a matter of routine, publicized multi-year net loss and liquidity forecasts, the Postal Service has not shown that disclosure of these charts in Appendices A and G would be likely to cause commercial harm.

In sum, the Application does not include a specific and detailed statement setting forth the nature and extent of the commercial harm alleged to result and the likelihood of such harm occurring from public disclosure of Appendices A and G. See 39 C.F.R. § 3007.21(c)(4). Instead, the Postal Service provides conclusory and speculative assertions that disclosure of Appendices A and G would be likely to cause commercial harm. This is insufficient to carry the Postal Service's burden of persuasion to support an application for non-public treatment. See *id.* § 3007.21(b). As discussed below, such conclusory and speculative assertions of commercial harm are also insufficient to outweigh the public interest in transparency at issue in this proceeding.

2. The Postal Service has not met its burden of persuasion to show that the alleged injury to the Postal Service's deliberative process is likely to result if Appendices A and G are disclosed to the public.

Additionally, the Application does not fulfill its burden of persuasion to show that the materials should be exempt from public disclosure under the deliberative process privilege. See 39 C.F.R. § 3007.21(b). The purpose of this privilege is to prevent injury to the quality of agency decisions.³⁷ "An agency cannot meet its statutory burden of justification [to withhold a document from disclosure based on the deliberative process privilege] by conclusory allegations of possible harm."³⁸

As a matter of routine, the Application contains a footnote that the Commission construes likely commercial injury broadly, to encompass other types of injury such as harms to privacy, deliberative process, or law enforcement.³⁹ The Application identifies one example of deliberative process harm and provides one hypothetical example, both of which are specific to the A&M Cost Report. Application at 3-4. Notably, the Response restates much of the content of the Application; however, "deliberative process" does not reappear in the Response. See *generally* Response. The Response echoes that the Application identified a number of potential harms and makes specific reference to competitive harm.⁴⁰ Given that the content of the Application and the Response, it is unclear if the Postal Service has asserted that it alleges that harm to the deliberative process would be likely to result from the disclosure of Appendices A and

³⁷ *N. L. R. B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975).

³⁸ *Judicial Watch, Inc. v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 259 (D.D.C. 2004) (quoting *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 258 (D.C. Cir. 1977)).

³⁹ Compare Application at 1-2 n.1 (citing Order No. 194 at 11), with Docket Nos. MC2018-142 and CP2018-203, USPS Request to Add Priority Mail Contract 430 to Competitive Product List and Notice of Filing Materials Under Seal, April 6, 2018, Attachment F to Request, at 1 n.1 (including the same observation in the request for non-public treatment of Priority Mail Contract 430).

⁴⁰ Response at 2. Moreover, the Postal Service follows this restatement with a footnote that even though the Application's discussion of the "hypothetical scenarios with respect to this identified harm" are specific to the A&M Cost Report, "the identified harm is equally applicable to the appendices at issue here." *Id.* at 2 n.6.

G. The difficulty in understanding if the Postal Service intended to raise this argument for the materials at issue is compounded by the lack of any citation to 5 U.S.C. § 552(b)(5) in the Application or the Response. Nonetheless, even assuming the Postal Service does raise this argument, it fails for the reasons discussed in the remainder of this section.

The Postal Service states “[r]evealing predecisional, deliberative information would chill management decisionmaking.” Application at 3. The basis for this potential harm is that the A&M Cost Report identifies potential cost-saving opportunities for the Postal Service. *Id.* at 4. The corresponding hypothetical example asserts that someone could harm the Postal Service’s deliberative process by using the A&M Cost Report to pressure the Postal Service not to pursue this cost-saving opportunity. *Id.* The Application does not explain how this rationale applies to Appendices A and G. The charts in Appendices A and G do not identify any specific cost-saving opportunities incorporated into the final outputs.

The Postal Service’s statements concerning Appendices A and G contradict a suggestion that the charts themselves relate to the Postal Service’s internal decision-making process or policy. The Postal Service states that Appendices A and G “reflect internal judgments and assumptions about various sensitive aspects of the Postal Service’s business.” Response at 2 (quoting Application at 3). However, the charts in Appendices A and G do not reveal the underlying alleged commercially sensitive data, assumptions, and calculations. Additionally, as the Postal Service notes “these assumptions [underlying Appendix G] do not necessarily represent an actual forecast or strategy; rather, they are intended to illustrate that, even with aggressive actions in other areas, a continued CPI-only price cap on market-dominant products cannot work.” 2017 Postal Service Comments at 141 n.271. Similarly, the Postal Service notes “these assumptions [underlying Appendix A] do not necessarily represent an actual forecast or strategy; rather, they are intended to illustrate that, even with aggressive actions in other areas, the Commission’s proposal will not achieve the purposes that it is designed to achieve.” 2018 Postal Service Comments at 55 n.140. Furthermore, Appendix A’s

forecasts of net losses and liquidity assuming that market dominant price increases may not exceed the CPI-U plus 2 percentage points are based wholly on the supplemental rate authority proposed in the NPR issued in this proceeding. See *id.* at 54 (stating that the charts in Appendix A “illustrate the likely impact of the proposed system’s [the NPR’s proposal to provide the Postal Service with 2 percentage points of supplemental rate authority] shortcomings”). Taken together, the Postal Service’s statements contradict its argument that the charts relate to internal decision-making process or policy. Instead, these statements indicate that the charts were generated to support the Postal Service’s position advanced in this proceeding that the existing ratemaking system and the NPR’s proposed supplemental rate authority are insufficient.

Further, the deliberative process-related hypothetical example, which is focused on the A&M Cost Report, notes that disclosure might chill Postal Service management from participating in or conducting similar cost studies in the future. Application at 4. The Postal Service’s contention that disclosure of Appendices A and G would produce a similar chilling effect is unpersuasive. The charts in Appendices A and G do not reveal the conclusions or recommendations of the A&M Cost Report, and the Postal Service does not explain why disclosing Appendices A and G would chill future cost studies. Moreover, each Commission decision on whether to terminate non-public status is a balancing test and highly fact-specific. A decision to terminate non-public treatment of Appendices A and G does not mean sealed materials would be disclosed in all instances. Further, the Postal Service has not shown that unsealing Appendices A and G would be likely to deter the Postal Service from submitting supporting material under seal when it deems such material necessary or useful to support its position.

In sum, the Application provides only conclusory and speculative assertions that disclosure of Appendices A and G would be likely to cause harm to the Postal Service’s internal deliberative process. Accordingly, the Postal Service has not carried its burden of persuasion to demonstrate that harm to the Postal Service’s internal deliberative process would be likely to occur if Appendices A and G are disclosed. See 39 C.F.R. § 3007.21(b). As discussed below, such conclusory and speculative assertions of

deliberative process harm are also insufficient to outweigh the public interest in transparency at issue in this proceeding.

D. Public Interest in Maintaining Financial Transparency

Any commercial and deliberative process injury alleged to result from disclosure must be balanced against the public interest in maintaining financial transparency of a government establishment competing in commercial markets. Given that the Postal Service has not met its burden of persuasion to show that alleged commercial and deliberative process harms are likely to occur due to the disclosure of Appendices A and G, the public interest in maintaining financial transparency of a government establishment competing in commercial markets is more than sufficient to outweigh the alleged injury.

The Postal Service's assertion that the Motion is deficient because it invokes only a general public interest is unpersuasive. As observed by the Joint Movants, disclosing Appendices A and G to the entire public serves the public interest in this proceeding. See Motion at 5-6. The Postal Service's financial stability (in the short term, medium term, and long term) is a central issue in this proceeding. See *id.* at 6. In this proceeding, the Postal Service filed Appendix G in support of its position that continuing to limit market dominant rate increases to the CPI-U would not achieve the statutory objective "to assure adequate revenues, including retained earnings, to maintain financial stability." 39 U.S.C. § 3622(b)(5); see 2017 Postal Service Comments at 141-42. Moreover, the Postal Service filed Appendix A to reinforce this position and to support its counterargument that the NPR's proposal would not achieve the statutory objectives. See 2018 Postal Service Reply Comments at 54-55, 70 n.175.

Other participants disagree on these central issues. For example, the Joint Movants take the position that the market dominant rate increases should not exceed the CPI-U and that no supplemental rate adjustment authority should be provided, asserting that "the charts [contained in Appendix A] confirm that the Postal Service does not need above-CPI rate increase authority." See, e.g., 2018 ANM *et al.* Reply

Comments at 33. Market dominant rate increases affect all members of the public using the mail. See Motion at 6. Accordingly, this proceeding has prompted the filing of 82 sets of comments in response to the ANPR and 194 sets of comments and 18 sets of reply comments in response to the NPR. Unsealing the charts in Appendices A and G would allow all interested persons to meaningfully engage with the arguments presented by the Postal Service. A more transparent discussion of these issues will produce a public benefit by promoting a robust discussion about potential modifications of the existing ratemaking system or adoption of an alternative ratemaking system as necessary to achieve the statutory objectives. Therefore, the public interest in maintaining the financial transparency of a government establishment competing in commercial markets in this proceeding is substantial. Even if the Commission accepts that the Postal Service's qualification that Appendices A and G are not an independent bases to justify the Postal Service's position or counterproposal, the Postal Service does not justify withholding this allegedly collateral material from the public given that the Postal Service has failed to persuasively show disclosure would injure the Postal Service.

Citing a prior ruling, the Postal Service asserts that the Motion invokes only a general public interest in transparency that is insufficient to overcome the presumption that non-public treatment is appropriate. Response at 3. However, the Response takes the Presiding Officer's Ruling No. 19 in Docket No. N2012-1 out of context. See *id.* The data at issue in that proceeding revealed the "average daily volumes (ADV) of First-Class Mail (FCM) carried between specific 3-digit ZIP Code origin and destination pairs and between specific facilities in the Postal Service's processing network."⁴¹ The Postal Service's application for non-public treatment contended that this specific data would disadvantage the Postal Service by advantaging competitors in the expedited

⁴¹ Docket No. N2012-1, POR No. 19 at 2 (quoting Docket No. N2012-1, Application of the United States Postal Service for Non-Public Treatment of Library Reference USPS-LR-N2012-1/NP7, January 6, 2012, at 1).

delivery market. *Id.* Given the disaggregated nature of the data at issue, the Presiding Officer concluded:

The Postal Service has made a minimal showing supporting non-public treatment of [the sealed data] in its application for non-public treatment. The application forms a rebuttable presumption that the [sealed data] requires non-public treatment. The presumption may be overcome by the presentation of fact or argument that tip the commercial injury versus financial transparency balancing test provided by 39 CFR § 3007.33 in favor of public disclosure.

Id. at 6. By contrast, in the instant proceeding, the Application fails to make a minimal showing to support non-public treatment of the highly aggregated values contained in the charts in Appendices A and G. Moreover, the Application filed in the instant proceeding does not focus on the injuries alleged to result from the disclosure of Appendices A and G.

Although the Presiding Officer in Docket No. N2012-1 expressed concerns regarding the persuasiveness of the Postal Service's claim of potential competitive injury, she found the motion for early termination of non-public status to be substantively lacking. *Id.* Specifically, the Presiding Officer found that the underlying motion's principal argument, that the data at issue concerned a market dominant product, was a factor weighing in favor of disclosure but was not dispositive under the circumstances. *Id.* However, as discussed above, the decision regarding whether supplemental rate adjustment authority should be provided to the Postal Service, and if so, the amount and allocation thereof, is a central issue in the instant proceeding. See Motion at 6. Accordingly, rather than "invok[ing] only the general public interest," the Joint Movants assert a "strong" public interest in full disclosure of Appendices A and G, which relate to this central issue. Motion at 5; see Response at 3. Therefore, the balancing of the injury versus the public interest in maintaining the financial transparency of a government establishment competing in commercial markets in the Presiding Officer's Ruling is distinguishable from the Motion filed in this proceeding.

Additionally, the Postal Service argues that the procedure allowing individuals to access Appendices A and G subject to protective conditions is sufficient and public

disclosure is therefore unnecessary. This argument is not persuasive and misconstrues the Commission's rules in 39 C.F.R. part 3007. Receiving access to non-public material under 39 C.F.R. § 3007.40 does not achieve the transparency associated with public disclosure. Receiving access and public disclosure are two different courses of action dependent on whether the material at issue should be withheld from public disclosure in accordance with 39 U.S.C. § 504(g).

If material is treated as non-public, 39 C.F.R. § 3007.40 allows participants to file a motion requesting access to that information. If the motion is granted, access to the non-public material is subject to certain restrictions and obligations that include a prohibition on disclosing the materials and limitations on those who can access competitive information. See 39 C.F.R. § 3007.60; *see also* Appendix A to part 3007. Furthermore, once granted access, participants may only view the non-public materials for a limited time and purpose. See 39 C.F.R. §§ 3007.25 and 3007.41. For instance, the Postal Service maintains that Appendices A and G "should be withheld from persons involved in competitive decision-making in the market for parcel and expedited services, as well as their consultants and attorneys[,] and "representatives of postal labor organizations and suppliers." Application at 6.

On the other hand, if the Commission determines, following the procedure appearing in 39 C.F.R. § 3007.31 and applying the standard appearing in 39 C.F.R. § 3007.33, that the material should be publicly disclosed, then it would be improper to maintain the materials under seal and require parties to seek access, subjecting them to the restrictions and obligations associated with requesting access to non-public information. Although these restrictions and obligations are necessary to protect truly non-public material, they unfairly burden participants and hinder the PAEA's goal of increased transparency when the material should be public.

Given that the Postal Service has not carried its burden of persuasion to demonstrate likely injury caused by such disclosures, the public interest in disclosure of Appendices A and G (as explained by the Joint Movants) is more than sufficient to justify termination of non-public status.

VI. CONCLUSION

For the above reasons, the Commission terminates the non-public status of Appendices A and G. The Commission finds that the Postal Service did not meet its burden of persuasion to show that these charts projecting aggregate net losses and liquidity under various alternative scenarios should be withheld from the public. Moreover, the public interest in maintaining the financial transparency of the Postal Service—a government establishment operating in commercial markets—outweighs the nature and extent of any likely commercial (and deliberative process-related) harm that may result from public disclosure of Appendices A and G.

Accordingly, the Commission orders the Postal Service to file the unredacted versions of Appendices A and G publicly by April 18, 2018. To allow members of the general public to review and comment on this newly public material within this docket, ten additional days will be provided to file comments, specifically limited to discussion of Appendices A and G. No challenge has been made to the non-public treatment of the A&M Cost Report or the Appendix A Workpapers. Therefore, this Order does not alter the obligations of persons with access to the A&M Cost Report or the Appendix A Workpapers subject to protective conditions.

VII. ORDERING PARAGRAPHS

It is ordered:

1. The Motion of the Association for Postal Commerce, Alliance of Nonprofit Mailers, and MPA—Association of Magazine Media for Early Termination of Non-Public Status of Two Documents Filed Under Seal, filed March 16, 2018, is granted.
2. By April 18, 2018, the Postal Service shall publicly file the unredacted versions of the following two documents: (1) the Appendix G to the Comments of the Postal Service filed on March 21, 2017, and (2) the

Appendix A to the Initial Comments of the United States Postal Service in Response to Order No. 4258 filed on March 1, 2018.

3. Within ten days after the Postal Service's public filing of Appendices A and G, any interested person may submit comments in this proceeding, specifically limited to discussion of Appendices A and G.

By the Commission.

Ruth Ann Abrams
Acting Secretary